IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5236 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI @ BHANGARI BABAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5236 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 31-5-2001 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. It is submitted by the learned advocate for the petitioner that the detaining authority has relied upon three cases registered against the petitioner before Nishabandi Police Station in passing the order of detention. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the State Government on 29-6-2001 demanding copies of certain documents and same has been received by the State authority on 2-7-2001, however, same has been rejected on 4-7-2001 by the State Government and the State Government has directed the detaining authority to comply with the said representation on 11-7-2001. Showing copy of said representation at Annexure-C, he has contended that representation has been received by the State Government on 2-7-2001 and it has been rejected on 4-7-2001, but it has been communicated to the detenu by the detaining authority on 20-7-2001 only and hence, there is a delay in deciding the representation and communicating the decision to the detenu. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary

to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the detenu has sent the representation on 29-6-2001 to the State Government which was received by the State Government on 2-7-2001 and though said representation has been rejected by the State Govt. on 4-7-2001, same has been communicated to the detenu on 20-7-2001 i.e. after a period of 16 days stating that they are not having any statement or document which has been demanded by the detenu and as and when it will be available, same will be sent to him. However, no explanation has been putforward by the authority by filing an affidavit explaining satisfactorily the delay caused in communicating the decision to the detenu. It has been held by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

5. Since no affidavit has been filed either by the detaining authority or by the State authority and also since no explanation has been putforth by the said authority for not communicating the decision of rejection of his representation till 20-7-2001, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 31-5-2001 passed against the detenu is hereby quashed and set aside. The detenu Rameshbhai Bhangari, S/o Babaji Thakor, is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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